

GUODING CHEN

Plaintiff(s)

Index #: 08 CIV 6240 (COTE)

- against -

Date Filed:

UNITED STATES OF AMERICA

Defendant(s)

AFFIDAVIT OF SERVICE

STATE OF NEW YORK: COUNTY OF NEW YORK ss:

SIEH CLARK BEING DULY SWORN DEPOSES AND SAYS DEPONENT IS NOT A PARTY TO THIS ACTION AND OVER THE AGE OF EIGHTEEN YEARS AND RESIDES IN THE STATE OF NEW YORK.

That on July 18, 2008 at 11:53 AM at

C/O OFFICE OF THE UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK
86 CHAMBERS STREET
NEW YORK, NY 10007

deponent served the within true copy of the SUMMONS & COMPLAINT AND JUDGES' RULES on UNITED STATES OF AMERICA, the defendant/respondent therein named.


BY LEAVING A TRUE COPY WITH ARETHA CHARLES LEGAL CLERK, BEING AUTHORIZED TO ACCEPT LEGAL PAPERS STATED.

Deponent further states that he describes the person actually served as follows:

Sex	Skin Color	Hair Color	Age (Approx.)	Height (Approx.)	Weight (Approx.)
FEMALE	BLACK	BLACK	30	5'5	140

Sworn to me on: July 18, 2008

Linda Forman
Notary Public, State of New York
No. 01FO5031305
Qualified in New York County
Commission Expires August 1, 2010


Robin M. Forman
Notary Public, State of New York
No. 01FO6125415
Qualified in New York County
Commission Expires April 18, 2009

Larry Yee
Notary Public, State of New York
No. 01YE5015682
Qualified in New York County
Commission Expires July 26, 2009



SIEH CLARK
License #: 1187234
Docket #: 554835

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

Southern

District of

New York

GUODING CHEN

SUMMONS IN A CIVIL ACTION

V.

UNITED STATES OF AMERICA

CASE NUMBER:

08 CIV 62407

TO: (Name and address of Defendant)

c/o Office of the United States Attorney for the Southern District of New
York
86 Chambers Street
New York, New York 10007

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Caesar & Napoli
Attn.: Robert Stein, Esq.
350 Broadway - 10th Floor
New York, New York 10007

COPY RECEIVED

JUL 18 2008

U.S. ATTORNEY'S SDNY

an answer to the complaint which is served on you with this summons, within 60 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

JUL 10 2008

CLERK

DATE

(By) DEPUTY CLERK

AO 440 (Rev. 8/01) Summons in a Civil Action

RETURN OF SERVICE		
Service of the Summons and complaint was made by me ⁽¹⁾	DATE	
NAME OF SERVER (<i>PRINT</i>)	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<div style="margin-bottom: 10px;"><input type="checkbox"/> Served personally upon the defendant. Place where served:</div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: </div> <div style="margin-bottom: 10px;"><input type="checkbox"/> Returned unexecuted:</div> <div><input type="checkbox"/> Other (specify):</div>		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL \$0.00
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> Executed on _____ Date </div> <div style="width: 60%;"> _____ <i>Signature of Server</i> </div> </div> <div style="text-align: center;"> _____ <i>Address of Server</i> </div>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GUODING CHEN,

Plaintiff,

-against-

UNITED STATES OF AMERICA,

Defendant
-----X

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JUL 18 2008

U.S. ATTORNEY'S SDNY

VERIFIED COMPLAINT

Civil No.: *08 Civ. 6240*

The plaintiff GUODING CHEN, by his attorneys, CAESAR & NAPOLI, complaining of the defendant, states as follows:

JURISDICTION AND BACKGROUND

_____. 1. The plaintiff is, and at all relevant times herein has been, a resident of the County of New York in the City and State of New York.

2. The defendant, the United States of America, is subject to suit under the provisions of the Federal Tort Claims Act, 28 U.S.C. §§1346(b), 2671, et. seq.

3. On October 15, 2007, in conformity with the requirements of 28 U.S.C. §2675, the plaintiff presented a written notice of claim to the Law Department of the United States Postal Service, setting forth the plaintiff's claim for damages in the amount of FIVE MILLION, FIVE THOUSAND, SEVEN HUNDRED SIXTY EIGHT DOLLARS & 89/100 (\$5,005,768.89). More than six (6) months have elapsed since this date and the federal agency in question has failed to make a final disposition of this claim.

4. Jurisdiction over this action is conferred upon this Court by 28 U.S.C. §1346(b).

Venue in this Court is proper under 28 U.S.C. §1402(b).

AS AND FOR A CAUSE OF ACTION ON BEHALF
OF THE PLAINTIFF GUODING CHEN

_____ 5. The plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "4" inclusive of this Verified Complaint as if more fully set forth herein.

6. Upon information and belief, on or about January 23, 2007, and at all times hereinafter mentioned, the defendant was the owner of a U.S. Postal Department mail truck bearing license plate number 9207979.

7. Upon information and belief, on January 23, 2007, and at all times hereinafter mentioned, the aforesaid vehicle was being driven by Michael E. Wiesenecker, in the course of his employment with the U.S. Postal Department.

8. Upon information and belief, on January 23, 2007, and at all times hereinafter mentioned, the plaintiff GUODING CHEN, was the operator of a motor vehicle bearing license plate number BWE1773, of the State of New York.

9. On January 23, 2007 a collision occurred between the aforesaid motor vehicles on Salem Road, at or near its intersection with Mills Road, in Burlington, New Jersey.

10. The foregoing occurrence was caused by and through the negligence of the defendant through its agents, servants and/or employees, in operating the aforesaid U.S. Postal truck in a negligent and careless manner, striking the vehicle operated by the plaintiff in the rear.

11. The action falls within the exception to CPLR Article 16 Limited Liability set forth in CPLR §1602(6).

12. The negligence of the defendant, as set forth above, is not protected by the discretionary function exception [§2680(a)] to the Federal Tort Claims Act.

13. As a result of the negligence of the defendant, as set forth above, the plaintiff, GUODING CHEN, suffered serious, permanent and painful injuries; past, present and future medical expenses; loss of income, impairment of earning capacity, loss of enjoyment of life, attorneys' fees and costs, all to his damage in the sum of FIVE MILLION, FIVE THOUSAND, SEVEN HUNDRED SIXTY EIGHT DOLLARS & 89/100 (\$5,005,768.89).

14. That by reason of the aforesaid occurrence, the plaintiff GUODING CHEN, sustained serious, severe and permanent injuries as defined by Section 671(4) of the Insurance Law of the State of New York.

15. That by reason of the aforesaid occurrence, the plaintiff GUODING CHEN, sustained qualifying injuries for recovery of general damages under the laws of the State of New Jersey.

WHEREFORE, the plaintiff demands judgment against the defendant in his Cause of Action herein, in the sum of FIVE MILLION, FIVE THOUSAND, SEVEN HUNDRED SIXTY EIGHT DOLLARS & 89/100 (\$5,005,768.89), together with the costs and disbursements incurred in the prosecution of this action.

DEMAND FOR TRIAL BY JURY

_____The plaintiff hereby demands a trial by jury as to all issues in this action.

Dated: New York, New York
June 29, 2008

Yours, etc.
CAESAR & NAPOLI

Attorneys for Plaintiff
GUODING CHEN

By: /s/
Robert Stein

350 Broadway - 10th Floor
New York, New York 10013
(646) 405-9622